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FIRST APPEAL NO. 226 OF 1983

Date of Decision : 15.3.1996

For Approval & Signature

THE HON'BLE MR. JUSTICE N.J.PANDYA

AND

THE HON'BLE MR. JUSTICE A.R. DAVE

1. Whether reporters of Local Papers may be allowed to see the judgment ?

2. To be referred to the Reporter or not ?

3. Whether their Lordships wish to see the fair copy of the judgment ?

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 or any other order made thereunder ?

5. Whether it is to be circulated to the

Civil Judge ?..L.....T.....T.....T.....T.....T.....T.....

Mr. Shailesh Brahmhatt , learned Advocate for the Appellant

Mr. M.I.Patel , learned Advocate for the Respondent No.1

Mr. N.N.Gandhi, learned Advocate for Respondents.

CORAM : N.J.PANDYA & A.R DAVE, JJ.

15.3.1996

ORAL JUDGMENT : (Per : Pandya, J)

One of the defendants of Special Civil Suit No. 97/77 of the 2nd Jt. Civil Judge (S.D.) Mehsana has filed the present appeal. The appellant happens to be defendant no.5 of the said

suit.

He came to be joined in the said suit as one of the defendants as at the time of suit transaction, according to the plaintiff- respondent no.1, he was a partner in the partnership firm having name and style as M/s Balisana Oil Mills.

Issue No.10 came to be raised specially for the purpose in view of sec. 32(3) of the Indian Partnership Act, 1932. Issues were framed at exh.45. Issue No.10 reads as under :

"10. Whether defendant no. 5 proves that he was relieved as partner of defendants' firm from 18.5.1976 ? If yes, whether defendant no. 5 is not liable for the suit liabilities ? Whether he further proves that a dissolution of partnership deed was made as per arbitrator's award and the same is in the custody of arbitrator ?

The discussion with regard to this issue is to be found in the judgment at page 31 onwards. Defendant no.5 has been examined at exh.161 at page 68 and he also tried to establish the fact of arbitration by examining witness Shri S.L.Patel at exh.166 at page 73 onwards.

At best, so-called arbitrator's award or decision of the intermediary indicates one thing that after finalization of the accounts that the said defendant no.5 was to retire from the firm. Unless, therefore, it is established that in terms of that decision exh.136 and other documents exh.137, 153, 162 etc. parties have acted and accounts are finalized, there is no question of defendant no.5- appellant retiring from the firm.

Significantly, as rightly noted by the trial Court on pages 31 & 32, admission made by defendant no.5 in his cross-examination, though according to him he had retired w.e.f. 18.5.1976, and had informed various institutions like GIIC, GIDC, GSFC and Bank of Baroda, he could not produce any documentary evidence in that regard nor had he come out with any material to show that he had advertised the fact of his retirement in the manner prescribed under the Indian Partnership Act, 1932.

The Arbitrator examined at exh.168 has not been believed by the trial court for the cogent reasons.

The net result, therefore, is that so far as the present appeal is concerned, we have no reason to defer from the conclusion arrived at by the trial court and, therefore, we dismiss the appeal with costs.

The appeal is, therefore, dismissed with costs. The judgment and decree of the trial court is hereby confirmed.

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Rawal*